

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0348
Sales/Use Tax
For the Years 1998, 1999, 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax-Exemption for rental property

Authority: IC 6-2.5-5-8; 45 IAC 2.2-4-27.

Taxpayer protests the assessment of sales/use tax with respect to several additional assets, car mats, oil, oil filters, brake pads and parts, windshield washer fluid and blades, tire repairs and wheel nuts used in its rental automobiles

II. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of penalty for negligence.

STATEMENT OF FACTS

Taxpayer is a business engaged in renting cars, primarily for insurance replacement for stolen and damaged vehicles. As part of its business, taxpayer purchased various supplies and equipment, including car mats, oil, oil filters, brake pads and parts, windshield washer fluid and blades, tire repairs and wheel nuts. As a result of audit, taxpayer was assessed use tax with respect to the property. In addition, various other purchases of the taxpayer were assessed use tax upon review of invoices showing that no sales tax had been paid at the time of purchase. Taxpayer protests the assessment of sales/use tax and penalty.

I. Sales Tax-Exemption for rental property

DISCUSSION

Taxpayer protests the imposition of sales/use tax with respect to its purchases of car mats, oil, oil filters, brake pads and parts, windshield washer fluid and blades, tire repairs and wheel nuts. While the rental of personal property is exempt from taxation under Ind. Code § 6-2.5-5-8, taxpayer claims that the exemption should extend to its purchases of various tangible personal

property items based on the theory that the items are not “consumed” within the meaning of 45 IAC 2.2-4-27.

With respect to all of these items other than the car mats and windshield washer fluid, the items are not fuels or other items which are consumed within the meaning of the regulation; rather, the items are essentially part of the car, whose rental is exempt. However, with respect to the car mats and windshield washer fluid, taxpayer has not presented an argument that would permit the Department to recognize the exemption claimed by taxpayer for these items based on the items being part of the automobile or otherwise not consumable.

Taxpayer also protests the imposition of sales tax with respect to several assets, which taxpayer claims include labor charges or for which sales tax had been paid. The auditor removed certain items from the amount subject to tax after taxpayer provided additional evidence.

FINDING

Taxpayer’s protest is sustained with respect to the tax imposed oil, oil filters, brake pads and parts, and windshield washer blades, tire repairs and wheel nuts. Taxpayer’s protest is sustained to the extent taxpayer provided additional information to the auditor. Taxpayer’s protest with respect to the tax due on car mats and windshield washer fluid is denied.

II. Tax Administration-Penalty

DISCUSSION

Taxpayer also protests the imposition of a 10% penalty for negligence. Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. Ind. Code § 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) “Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving

rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

Taxpayer has claimed that it was not willfully negligent, and therefore should not be subject to penalty. However, the test is not one of willful neglect, a standard tantamount to fraud. The standard is one of meeting the standard of care expected of a normal taxpayer, either in terms of filing or recordkeeping. Taxpayer has not presented any evidence that it met this standard.

FINDING

Taxpayer's protest is denied.